



# CITY OF NEW ORLEANS

DEPARTMENT OF CITY CIVIL SERVICE  
SUITE 900 - 1340 POYDRAS ST.  
NEW ORLEANS, LA 70112  
(504)658-3500 FAX NO. (504) 658-3598

CITY CIVIL SERVICE COMMISSION  
BRITTNEY RICHARDSON, CHAIRPERSON  
JOHN H. KORN, VICE-CHAIRPERSON  
MARK SURPRENANT  
RUTH WHITE DAVIS  
ANDREW MONTEVERDE

AMY TREPAGNIER  
DIRECTOR OF PERSONNEL

Wednesday, June 12, 2024

Ms. Rowena Jones  
1340 Poydras St., Suite 600  
New Orleans, LA 70112

Re: **Tyshawn Green VS.  
Sewerage & Water Board  
Docket Number: 9536**

Dear Ms. Jones:

Attached is the action of the Civil Service Commission at the Commission's meeting on Thursday, 5/30/2024.

Yours very truly,

A handwritten signature in blue ink that reads "Stacie Joseph".

Stacie Joseph  
Management Services Division

cc: Ghassan Korban  
Ashley Smith  
Tyshawn Green

file



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Wednesday, June 12, 2024

Ms. Rowena Jones  
1340 Poydras St., Suite 600  
New Orleans, LA 70112

Re: **Tyshawn Green VS.  
Sewerage & Water Board  
Docket Number: 9537**

Dear Ms. Jones:

Attached is the action of the Civil Service Commission at the Commission's meeting on Thursday, 5/30/2024.

Yours very truly,

A handwritten signature in blue ink that reads "Stacie Joseph".

Stacie Joseph  
Management Services Division

cc: Ghassan Korban  
Ashley Smith  
Tyshawn Green

file

**CIVIL SERVICE COMMISSION  
CITY OF NEW ORLEANS**

**TYSHAWN GREEN,  
Appellant**

**Docket Nos. 9536, 9537**

**v.**

**SEWERAGE & WATER BOARD,  
Appointing Authority**

**ORDER**

At its January 19, 2024, regular meeting, the Commission granted Mr. Green leave to amend his appeal to more fully describe his claims of sex discrimination, as he articulated in opposition to the Sewerage & Water Board's first motion for summary disposition and at oral argument. Mr. Green supplemented the appeal on January 24, 2024, stating he is a transgender male, *inter alia*. The Commission's written order granted leave to Mr. Green was issued by the Department of Civil Service on February 1, 2024. The appeal was set for hearing on May 1, 2024. The Sewerage & Water Board moved for summary disposition on April 16, 2024, on the basis that the Commission lacks jurisdiction over Mr. Green's sex discrimination appeal.

Appellant argues that the instant motion for summary disposition should be dismissed as untimely. The Sewerage & Water Board's second motion for summary disposition is timely under Civil Service Rule II, section 6.8, as it was filed 15 calendar days prior to the date scheduled for the hearing.

The Louisiana Constitution grants jurisdiction to the Commission to consider appeals based on discrimination: "No classified employee shall be discriminated against because of his political or religious beliefs, sex, or race." La. Const. art. X, section 8. The version of Civil Service

Rule II, section 4.6<sup>1</sup> in effect at the time of Mr. Green’s appeal prohibits discrimination based on sex or sexual orientation. The Commission ruled in its February 1, 2024, order that sexual orientation and gender identity are types of sex discrimination:

In 2020, the United States Supreme Court held that Title VII’s prohibition against sex discrimination included protection for transgender persons. The Court reasoned that “[f]or an employer to discriminate against employees for being homosexual or transgender, the employer must intentionally discriminate against individual men and women in part because of sex. That has always been prohibited by Title VII’s plain terms—and that ‘should be the end of the analysis.’” *Bostock v. Clayton County., Georgia*, 140 S. Ct. 1731, 1743 (2020). Mr. Green alleges at least one incident of harassment based on transgender status during the 30-day period preceding the filing of his discrimination appeal, the November 13, 2023, incident. To the extent Mr. Green relies on conduct before November 9, 2023, these incidents are time-barred.

In addition, relying on *Bostock*, the United States Department of Education promulgated rules on April 19, 2024, interpreting sex discrimination in Title IX of the Education Amendments of 1972 to include gender identity and sexual orientation. *See* 24 C.F.R. Part 106. Even though couched as a jurisdictional challenge, the Sewerage & Water Board seeks reconsideration of the Commission’s February 1, 2024, ruling. This motion was filed more than ten (10) days after the

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<sup>1</sup> The Commission amended Rule II, sections 4.5-4.6 as follows on May 30, 2024:

**RULE II, SECTIONS 4.5 AND 4.6**

4.5 Employees in the classified service who allege that they have been discriminated against because of their political or religious beliefs, sex **(including sexual harassment, sexual orientation, and/or gender identity)**, or race, ~~age, disability or sexual orientation~~ shall have the right to appeal to the Commission.

4.6 Persons who shall have applied for, or shall have been examined for, the classified service and shall not have established their status as permanent classified employees and who allege that they have been discriminated against because of their political or religious beliefs, sex **(including sexual harassment, sexual orientation, and/or gender identity)**, or race, ~~age, disability or sexual orientation~~ in review of their applications, admission to the examination, the scoring of examinations, the establishment of eligible lists or certification shall have the right to appeal to the Commission

February 1, 2024, decision was final. The motion for summary disposition is dismissed as untimely.

In addition, the Commission lacks the authority to rule on the facial constitutionality of its own rules. *Casse v. Sumrall*, 547 So. 2d 1381, 1383 (La. App. 1 Cir.), *writ denied*, 551 So. 2d 1322 (La. 1989) (“The Commission can not grant this relief because it has no jurisdiction to decide the constitutionality of its own rules.”); *Murray v. Dep't of Revenue & Tax'n*, 504 So. 2d 561, 563 (La. App. 1 Cir. 1986), *writ denied*, 504 So. 2d 880 (La. 1987), and *writ denied*, 504 So. 2d 882 (La. 1987), and *writ denied*, 504 So. 2d 883 (La. 1987)(“the Civil Service Commission is not the proper forum in which to test the constitutionality of its own rules and procedures”). At the time Mr. Green filed his appeal, Rule II, section 4.6 explicitly granted an appeal right for discrimination based on sexual orientation. The motion is also dismissed because the Commission lacks authority to rule on the constitutionality of the inclusion of sexual orientation in Rule II, section 4.6.

To the extent that the Sewerage & Water Board argues that the Commission’s application of Rule II, section 4.6, granting a right of appeal to employees based on sexual orientation or sex, is an as-applied constitutional challenge, the Commission denies this motion for summary disposition. Because discrimination based on sexual orientation or gender identity is a type of sex discrimination, the Commission has jurisdiction over this appeal as applied to Mr. Green based on Louisiana Constitution art. 10, section 8.

The Sewerage & Water Board’s second motion for summary disposition is denied.



Brittney Richardson (Jun 9, 2024 15:25 CDT)

BRITTNEY RICHARDSON, CHAIRPERSON

J H Korn

J H Korn (Jun 11, 2024 19:33 CDT)

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JOHN KORN, VICE-CHAIRPERSON

Mark C. Surprenant

Mark C. Surprenant (Jun 5, 2024 12:18 CDT)

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MARK SURPRENANT, COMMISSIONER

Ruth White Davis

Ruth Davis (Jun 6, 2024 21:18 CDT)

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RUTH DAVIS, COMMISSIONER

Andrew Monteverde

Andrew Monteverde (Jun 5, 2024 16:43 CDT)

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ANDREW MONTEVERDE, COMMISSIONER